

ELECTION

In order to be responsive to the requirement for restriction, Applicants elect the invention set forth in Group I, claims 54-58, 61-63, 65, 66, 69-71 and 73-76, with traverse.

TRAVERSE

Notwithstanding the election of the claims of Group I in order to be responsive to the Restriction Requirement, Applicants respectfully traverse the Examiner's requirement for restriction.

Initially, Applicants point out that the requirement for restriction omits one of the two criteria of a proper requirement as now established by U.S. Patent and Trademark Office policy, as set forth in MPEP 803, viz. that "an appropriate explanation" must be advanced by the Examiner as to the existence of a "serious burden" if a restriction were not required. Due to the aforementioned omission, it is respectfully submitted that the requirement for restriction is improper and, consequently, its withdrawal is respectfully requested.

Related to this, the requirement is traversed since there would not appear to be a serious burden to examine Applicants' application in total, and for which they have paid the appropriate claim fees. Applicants submit that it would be no serious burden on the Examiner to examine all of the pending claims, because a search for all of the claims in the above-identified application, should be made in order to do a complete and thorough search in view of the recognized relationship between the claims in Groups I and II.

For example, each of the groups of invention are directed to toner particles and liquid toner. Thus, the search for each group of claims should include similar, if not the same, art areas.

Furthermore, as the Examiner appreciates, in order to justify a requirement for restriction the difference between the invention defined by the various groups of claims must be material. Despite this requirement, although the Examiner has indicated that the difference is material, the Examiner has not stated or offered a definition of what is "materially different" to justify a requirement for restriction, or offered an explanation as to why the mentioned differences are material for restriction requirement purposes.

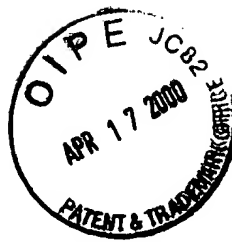
Absent a definition or explanation of this concept, it is respectfully submitted that although the Examiner has alleged that the Examiner has not explained how such a difference is sufficiently "materially different" so as to justify restriction between the process claims and product claims. In this regard, the Examiner has stated that "In the instant case in the different inventions the metal flakes need not be a fluorescent material.' However, the Examiner has not indicated how this distinction is materially different for examination purposes to support a restriction requirement, and an undue burden for searching each of the two groups of invention.

In view of the foregoing, it is respectfully requested that the Examiner seriously reconsider the requirement for restriction, and withdraw the same so as to give an examination on the merits on all of the claims pending in this application.

CONCLUSION

For the reasons discussed above, it is respectfully submitted that the Examiner's requirement for restriction is improper and should be withdrawn.

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Application No. 09/322,174

Withdrawal of the requirement for the restriction with the examination of all claims pending in this application is respectfully requested.

Favorable consideration with early allowance of claims is most earnestly requested.

If the Examiner has any questions, or wishes to discuss this matter, please call the undersigned at the telephone number indicated below.

Respectfully submitted,
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